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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 JEFF HANCOCK, individually and
on behalf of all others similarly
situated,

14 Plaintiff,

15 vs.

16 JACKSON HEWITT TAX
17 SERVICE INC.,

18 Defendant.

Case No.: 2:19-CV-02602-PSG-PJW

**DEFENDANT'S NOTICE OF
MOTION AND MOTION TO
DISMISS, TRANSFER, OR
STRIKE; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATIONS OF MARGARET
SCHUCHARDT AND AMORI
LANGSTAFF IN SUPPORT;
[PROPOSED] ORDER**

Date: July 22, 2019

Time: 1:30pm

Courtroom: 6A

Judge: The Honorable Philip S.
Gutierrez

22 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

23 **PLEASE TAKE NOTICE** that on July 22, 2019, at 1:30 pm, before the
24 Honorable Philip S. Gutierrez, in Courtroom 6A of the United States District Court
25 for the Central District of California, located at 350 W. 1st Street, Los Angeles, CA
26 90012, Defendant Jackson Hewitt Tax Service, Inc. ("Jackson Hewitt" or
27 "Defendant"), will and hereby does move to dismiss Plaintiff's Complaint for lack
28 of personal jurisdiction pursuant to Federal Rule 12(b)(2), or, in the alternative, to

1 dismiss Plaintiff's Complaint for improper venue pursuant to Federal Rule 12(b)(3),
 2 or, in the alternative, to transfer this action to the District of New Jersey or the
 3 Western District of Texas pursuant to 28 U.S.C. 1404(a), or, in the alternative, to
 4 strike Plaintiff's class allegations pursuant to Federal Rule 12(f).

5 This motion is made following the conference of counsel pursuant to L.R. 7-
 6 3, which took place on May 17, 2019 and May 24, 2019. Counsel discussed the
 7 bases for this motion but were unable to resolve the issues set forth herein.

8 Dated: May 31, 2019

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

This case does not belong in California. Plaintiff, who is a resident of Texas, has brought in this Court a putative class action under the TCPA for text messages allegedly sent by Defendant, a Delaware corporation headquartered in New Jersey. Plaintiff should not be permitted to proceed with his putative class claims in this Court for four reasons. First, Defendant is not subject to personal jurisdiction in California in connection with this lawsuit. Second, this District is an improper venue for Plaintiff's claims. Third, even if personal jurisdiction did exist and venue were proper, this action is better suited for adjudication in another forum. Finally, should the suit remain in this Court, Plaintiff cannot pursue his claims on a class basis. Plaintiff should be compelled to litigate this matter in a proper forum, and/or should be prohibited from asserting class claims.

FACTUAL BACKGROUND

Defendant provides computerized preparation of federal, state and local individual income tax returns in the United States through a nationwide network of franchised and company-owned offices. Declaration of Amori Langstaff ("Langstaff Decl."), at ¶ 2.¹ Jackson Hewitt is a Delaware corporation that maintains its principal place of business in Jersey City, New Jersey. Compl., ¶ 6. There are close to 6,000 Jackson Hewitt franchised and company-owned locations nationwide. Langstaff Decl., at ¶ 2. Approximately 292 of those offices (about 5%) are located in California. Langstaff Decl., at ¶ 2.

Plaintiff is a citizen of Texas who resides in Williamson County, Texas. Compl., ¶ 5. Plaintiff's parents engaged Jackson Hewitt franchisees to prepare their tax returns for several years, beginning in 2009. *See* Langstaff Decl., at ¶¶ 3-4;

¹ In resolving the question of personal jurisdiction, the court may consider evidence presented in affidavits to assist in its determination. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004).

1 Declaration of Margaret Schuchardt (“Schuchardt Decl.”), at ¶ 4. From tax year
2 2016 forward, Reta Hancock (Plaintiff’s mother) continued to do business with
3 Jackson Hewitt franchisees. Langstaff Decl., at ¶ 4; Schuchardt Decl., at ¶ 4. Most
4 pertinent, Ms. Hancock and Plaintiff (her son) in 2018 engaged a Jackson Hewitt
5 franchisee to file Ms. Hancock’s taxes for tax year 2017 at a location in Cedar Park,
6 Texas. Langstaff Decl., at ¶ 3; Schuchardt Decl., at ¶ 4. In connection with this and
7 other returns, Plaintiff and his mother provided Jackson Hewitt with a particular
8 telephone number, and executed documents authorizing Jackson Hewitt to send
9 promotional text messages to that number and also waiving any right to resolve
10 disputes against Defendant on a class basis. Langstaff Decl., at Ex. 1 and Ex. 2.²

11 Plaintiff has now filed suit in this Court, alleging that he received unsolicited
12 text messages “urging him to have Defendant . . . do his taxes,” and on this basis
13 asserts individual and putative class claims against Defendant for violations of the
14 TCPA. *See* Compl., ¶¶ 2-4. The phone number at which Plaintiff received text
15 messages was the same number Plaintiff and his mother provided to Jackson Hewitt
16 in the course of Jackson Hewitt’s tax preparation services. *See* Langstaff Decl., at
17 Exs. 1-2; Schuchardt Decl., at ¶ 4. The March 27, 2019 text message referenced in
18 Plaintiff’s Complaint was sent by a Jackson Hewitt franchisee headquartered in
19 Georgetown, TX. Langstaff Decl., at ¶ 7.

20 Plaintiff alleges that venue is proper in this forum because non-party CallFire,
21 Inc. d/b/a EZ Texting (“CallFire”) is “headquartered in this District” and Defendant
22 “hired CallFire to send the texts that are the subject of this case,” and therefore “a
23 substantial part of the events and omissions giving rise to Plaintiff’s claims occurred
24

25
26 ² Defendant is filing contemporaneously with this motion an application for leave to
27 file under seal the tax return documents attached as Exhibits 1 and 2 to the Langstaff
28 Declaration.

1 in this District.” Compl., ¶¶ 7, 10.

2 CallFire is a telecommunications platform that allows users to develop and
3 send messages to recipients of their choosing. *Kauffman v. CallFire, Inc., et al.*, No.
4 14-CV-1333-H-DHB (S.D. Cal.), Dkt. 38-2, p. 2 of 11.³ CallFire is a common
5 carrier registered with the FCC, and CallFire does not control the content,
6 destination or timing of its users’ communications. *Id.* Instead, CallFire acts as a
7 passive conduit between its customers and other telecommunications carriers that
8 deliver the messages to the ultimate recipients. *Id.* at pp. 2-3 of 11. Put simply,
9 CallFire is an application that transmits user-created and user-directed text messages
10 to the user’s telephony provider, which in turn transmits those messages to the
11 providers of the intended recipients, which in turn transmits the messages to the
12 recipients. *Id.* at p. 2 of 11; Langstaff Decl., at ¶¶ 5-6. Defendant and its
13 franchisees utilize the CallFire platform to send text messages to their customers.
14 Langstaff Decl., at ¶ 5.

15 ARGUMENT

16 Plaintiff’s putative class claims are not properly asserted in this Court.
17 Continued prosecution of this litigation in the Central District of California would
18 not comport with due process or statutory venue requirements, and would result in
19 substantial inconvenience to Defendant and the majority of the witnesses with
20 information relevant to Plaintiff’s claims. Moreover, Plaintiff is prohibited from
21 pursuing class claims in this or any Court. For all of these reasons, Plaintiff cannot
22 proceed with his claims as pled in this forum.

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24
25
26 ³ The Court may take judicial notice of the filings made by CallFire in the *Kauffman*
27 litigation. See *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6
28 (9th Cir. 2006) (The court “may take judicial notice of court filings and other
matters of public record.”).

I. PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED FOR LACK OF PERSONAL JURISDICTION

Plaintiff’s claims relating to a text message he received in Texas does not subject Defendant to personal jurisdiction in this Court. Defendant is not headquartered or incorporated in California, and Plaintiff’s claims have no connection to California. Accordingly, Plaintiff’s claims should be dismissed for want of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2).

A. Legal Standard

Where a defendant moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is appropriate. *See Barone v. Intercontinental Hotels Grp. PLC*, No. 15-cv-04990-JCS, 2016 U.S. Dist. LEXIS 66851, at *13 (N.D. Cal. May 20, 2016). Fed. R. Civ. P. 4(k)(1)(A) (service of process is effective to establish personal jurisdiction over a defendant “who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.”). California’s long-arm statute permits the exercise of personal jurisdiction so long as it comports with federal due process. *See* Code Cal. Civ. Proc. § 410.10; *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800-801 (9th Cir. 2004). Accordingly, a jurisdictional analysis under California law is coextensive with federal due process analysis.

“For a court to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’” *Schwarzenegger*, 374 F.3d at 801 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Under the minimum contacts test, jurisdiction can either be “specific” or “general.” *Arthur v. Douglas*, No. CV 08-8233 PSG, 2009 U.S. Dist. LEXIS 23105, at *5 (C.D. Cal. Mar. 10, 2009) (Gutierrez, J.) (citation omitted).

General jurisdiction allows “a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world.” *Schwarzenegger*, 374 F.3d at 801. For corporations, general jurisdiction is appropriate only when the corporation’s contacts with the forum state “are so constant and pervasive as to render it essentially at home” in the state. *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014) (citation omitted). By contrast, “specific jurisdiction” exists when a case “aris[es] out of or relate[s] to the defendant’s contacts with the forum.” *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984); *see also Daimler*, 571 U.S. at 128.

B. There Is No General Personal Jurisdiction Over Jackson Hewitt.

Defendant can only be subject to the general jurisdiction of this Court if it is “at home” in California. Ordinarily, for general jurisdiction purposes, a corporation will be deemed ‘at home’ and hence ‘domiciled’ only where it has its principal place of business or where it is incorporated. *Daimler*, 571 U.S. at 137. Only in an “exceptional case” will general jurisdiction be available anywhere else. *Daimler*, 571 U.S. at 139 n.19. It is, therefore, “incredibly difficult” to establish general jurisdiction in a forum anywhere other than the place of incorporation or principal place of business. *Monkton Ins. Servs. v. Ritter*, 768 F.3d 429, 432 (5th Cir. 2014).

There is no basis for the exercise of general jurisdiction here. Defendant is incorporated in the state of Delaware, and has its principal place of business in New Jersey. While Defendant conducts business nationwide, and a modicum of that business occurs in California, those are not “exceptional circumstances” that justify deviation from the general rule that Defendant is only subject to general jurisdiction in Delaware and New Jersey. *See Daimler*, 564 U.S. at 140 n.20 (“A corporation that operates in many places can scarcely be deemed at home in all of them.”); *see also Fox v. Berenis*, No. 3:17-cv-2066-SI, 2018 U.S. Dist. LEXIS 203859, at *7 (D. Or. Dec. 3, 2018) (existence of franchisees in forum state did not “support exercising general jurisdiction in a forum other than [Defendant’s] state of

incorporation or principal place of business.”).

C. There Is No Specific Personal Jurisdiction Over Defendant.

Nor is Defendant subject to specific jurisdiction in this Court as a result of this suit. In determining whether specific jurisdiction exists, courts consider the “relationship among the defendant, the forum, and the litigation.” *Helicopteros Nacionales de Colombia*, 466 U.S. at 414 (citation omitted). Here, there is no nexus between Defendant, this Court, and the instant litigation.

In California, a court may exercise specific jurisdiction over a nonresident defendant only if: (1) the defendant has purposefully availed [itself] of forum benefits; (2) the controversy is related to or arises out of the defendant’s contacts with the forum; and (3) the assertion of personal jurisdiction would comport with ‘fair play and substantial justice,’ *i.e.*, it must be reasonable. *See Pavlovich v. Superior Court*, 29 Cal. 4th 262, 269 (2002); *see also Arthur*, 2009 U.S. Dist. LEXIS 23105, at *6-7. None of these elements is present here.

1. Defendant Did Not Purposefully Direct The Alleged Activities At California.

To begin with, there is nothing to suggest that Defendant (or anyone else) purposefully directed the conduct at issue toward this forum.⁴ “Purposeful direction ‘requires that the defendant . . . have (1) committed an intentional act, (2) expressly

⁴ Under the first prong of the specific jurisdiction analysis, courts in this Circuit apply a “purposeful direction” test for claims sounding in tort and a “purposeful availment” test for contract claims. *See Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir. 2017); *see also Kinetics Noise Control, Inc. V. ECORE Int’l, Inc.*, No. CV 10-7902 PSG (JEMx), 2011 U.S. Dist. LEXIS 164284, at *6 (C.D. Cal. Jan. 12, 2011) (Gutierrez, J.). For purposes of this aspect of the jurisdictional analysis, TCPA claims sound in tort and thus the purposeful direction test applies. *See Castillo v. Caesars Entm’t Corp.*, No. 18-cv-05781-EMC, 2018 U.S. Dist. LEXIS 201721, at *4 (N.D. Cal. Nov. 28, 2018) (“The instant case, which involves an alleged TCPA violation, is based on a tort, not a contract, and thus the purposeful direction [test] should apply.”).

1 aimed at the forum state, (3) causing harm that the defendant knows is likely to be
2 suffered in the forum state.” *Morrill*, 873 F.3d at 1142 (quoting *Schwarzenegger*,
3 374 F.3d at 803). Plaintiff’s allegations here fail at least the second and third
4 requirements.

5 Plaintiff cannot show that Defendant expressly aimed any relevant conduct at
6 California when the Defendant is located in New Jersey, and the text message that
7 forms the basis of Plaintiff’s claims was sent by an entity in Texas to an individual
8 in Texas. Plaintiff’s only basis for bringing this suit in California is that non-party
9 CallFire, whose text messaging software platform was utilized by Jackson Hewitt
10 and its franchisees, is headquartered in this District.⁵ But Plaintiff’s allegations as to
11 CallFire’s role in the transmission of the texts at issue are inaccurate, and in any
12 event do not support the assertion of personal jurisdiction over Jackson Hewitt in
13 this case.

14 At the outset, CallFire is a third party, and so its connection to California
15 cannot drive the specific jurisdiction analysis. *See Walden v. Fiore*, 571 U.S. 277,
16 284 (2014) (“We have consistently rejected attempts to satisfy the defendant-
17 focused ‘minimum contacts’ inquiry by demonstrating contacts between the plaintiff
18 (or third parties) and the forum State.”) (emphasis added); *Axiom Foods, Inc. v.*
19 *Acerchem Int’l, Inc.*, 874 F.3d 1064, 1070 (9th Cir. 2017) (“As required, we focus
20 on the defendant’s contacts with the forum State itself, not the defendant’s contacts
21 with persons who reside there.”) (citation omitted).

22 Moreover, CallFire is a communication platform utilized by Defendant, which
23

24 ⁵ Plaintiff’s Complaint alleges that “CallFire’s computers stored the numbers
25 Jackson Hewitt provided, and automatically sent the texts – *i.e.*, made the calls that
26 are the subject of this case – according to Jackson Hewitt’s instructions,” and that
27 “CallFire’s computers generated a sequence for sending the texts, based upon the
28 demographic and other information Jackson Hewitt provided, and then
automatically dialed those numbers.” Compl., ¶¶ 26-27.

1 serves as a gateway between Defendant and its franchisees, their respective
 2 telephone carriers, and the carriers of the various recipients of the transmitted texts.
 3 Langstaff Decl., at ¶ 6. Plaintiff himself must not believe that CallFire is the
 4 “maker” or “initiator” of text messages within the meaning of the TCPA, as he
 5 declined to name CallFire as a defendant in this case. *See Kauffman v. CallFire,*
 6 *Inc.*, 141 F. Supp. 3d 1044, 1050 (S.D. Cal. 2015) (“the Court concludes that
 7 Defendant CallFire is a carrier that did not initiate the messages Plaintiff
 8 received.”); *see also* Rules and Regulations Implementing the Telephone Consumer
 9 Protection Act of 1991, 30 FCC Rcd. 7961, 7982 ¶ 33 (2015), *aff’d in part and*
 10 *rev’d in part on other grounds by ACA Int’l v. FCC*, 885 F.3d 687 (D.C. Cir. 2018)
 11 (finding that a text messaging app “is not the maker or initiator of the text” where “it
 12 does not control the recipients, timing, or content, but instead merely has some role,
 13 however minor, in the causal chain that results in the making of a telephone call”).

14 For this reason, a number of courts in the Ninth Circuit have held that out-of-
 15 state defendants (like Defendant) that engage, use, or embed platforms and
 16 technologies from California-based companies (like CallFire) are not subject to
 17 specific jurisdiction in California based on that connection. *See, e.g., Castillo*, 2018
 18 U.S. Dist. LEXIS 201721 (use of in-state text messaging platform insufficient to
 19 confer personal jurisdiction over out-of-state defendant); *Smith v. Facebook, Inc.*,
 20 262 F. Supp. 3d 943, 948-52 (N.D. Cal. 2017) (declining to exercise jurisdiction
 21 over out-of-state website operators using embedded codes from Facebook to track
 22 patrons’ browsing histories even though Facebook was based in California); *OOO*
 23 *Brunswick Rail Mgmt. v. Sultanov*, No. 5:17-cv-00017-EJD, 2017 U.S. Dist. LEXIS
 24 8374 (N.D. Cal. Jan. 20, 2017) (declining to exercise jurisdiction over Gmail users
 25 based solely on use of Google’s product); *DFSB Kollektive Co. Ltd. v. Bourne*, 897
 26 F. Supp. 2d 871, 883 (N.D. Cal. 2012) (holding that the defendant did not
 27 purposefully direct activities at California by “utiliz[ing] accounts on California-
 28 headquartered Internet companies Facebook, hi5.com, DeviantArt, and 4Shared to

1 direct traffic to his Websites”), *adopted by* 897 F. Supp. 2d 871 (N.D. Cal. Sept. 13,
2 2012). There is no reason to conclude otherwise here.

3 Finally, because any alleged harm to Plaintiff would have occurred in Texas,
4 Plaintiff cannot establish that Defendant “‘caus[ed] harm that the defendant knows
5 is likely to be suffered in [California],’” the third element of the purposeful direction
6 test. *Morrill*, 873 F.3d at 1142 (quoting *Schwarzenegger*, 374 F.3d at 803).

7 Accordingly, just as the allegations in the Complaint indicate that the conduct at
8 issue could only have been aimed at Texas, those allegations also indicate that any
9 alleged harm occurred—and could only reasonably be expected to have occurred—
10 in Texas.

11 **2. Plaintiff’s TCPA Claim Does Not Arise Out Of Or Relate To** 12 **Any California-Related Activities.**

13 To satisfy the second prong of the personal jurisdiction analysis, a plaintiff must
14 show that the “the controversy is related to or arises out of the defendant’s contacts
15 with the forum.” *Pavlovich*, 29 Cal. 4th at 269. To evaluate this factor of the
16 analysis, courts employ a “but for” test pursuant to which “a lawsuit arises out of a
17 defendant’s contacts with the forum state if a direct nexus exists between those
18 contacts and the cause of action.” *Elofson v. Bivens*, No. 15-cv-05761-BLF, 2017
19 U.S. Dist. LEXIS 20218, at *17 (N.D. Cal. Feb. 13, 2017) (citation omitted); *accord*
20 *Allen v. Rodey, Dickason, Sloan, Akin & Robb, P.A.*, No. CV 09-3765 PSG (FFMx),
21 2010 U.S. Dist. LEXIS 147971, at *12-13 (C.D. Cal. Jan. 20, 2010) (Gutierrez, J.).
22 “That is, a plaintiff must show that ‘but for’ the defendant’s forum related conduct,
23 the injury would not have occurred.” *Abedi v. New Age Med. Clinic PA*, No. 1:17-
24 CV-1618 AWI SKO, 2018 U.S. Dist. LEXIS 105932, at *6 (E.D. Cal. June 25,
25 2018) (citation omitted). As set forth above, Defendant engaged in no forum-related
26 conduct relative to this action, and thus there is no such conduct that could have
27 been the “but for” cause of Plaintiff’s claimed injury.

3. The Exercise Of Jurisdiction Over Defendant In This Case Would Be Unreasonable.

Because Plaintiff has failed to satisfy the second prong of the specific jurisdiction inquiry, no further analysis is needed. *See Schwarzenegger*, 374 F.3d at 802 (“If the plaintiff fails to satisfy either of these [first two] prongs, personal jurisdiction is not established in the forum state.”). But even if Plaintiff could meet his “burden of satisfying the first two prongs,” and this Court were to reach the third prong, this Court nevertheless should grant Defendant’s motion because exercising personal jurisdiction over Defendant in this matter would be unreasonable. *Id.*

Courts consider the following seven factors in determining whether the exercise of jurisdiction over a defendant is reasonable: (1) the extent of the defendant’s purposeful interjection into the forum state, (2) the burden on the defendant in defending in the forum, (3) the extent of the conflict with the sovereignty of the defendant’s state, (4) the forum state’s interest in adjudicating the dispute, (5) the most efficient judicial resolution of the controversy, (6) the importance of the forum to the plaintiff’s interest in convenient and effective relief, and (7) the existence of an alternative forum. *See Corwin v. Swanson*, No. CV 10-769 PSG, 2010 U.S. Dist. LEXIS 153533, at *12 (C.D. Cal. Apr. 27, 2010) (Gutierrez, J.). On balance, these factors weigh strongly against asserting jurisdiction here.

In particular, as explained in detail above, this case involves no “purposeful interjection” by Defendant into California. Defendant’s business, evidence, and witnesses are in New Jersey, not California, as Defendant is principally located in New Jersey. Moreover, the text message at issue was sent by a Texas entity, and receipt of the text message at issue occurred in Texas; accordingly, California has no particular interest in adjudicating this dispute because it does not involve any claims under California law—only a federal claim brought under the TCPA. Additionally, alternative fora exist in New Jersey and Texas (as discussed below), and litigating in

1 a federal court in New Jersey or Texas will have no negative effect on Plaintiff's
2 interest in convenient and effective relief. All of the relevant factors indicate that
3 exercising jurisdiction over Defendant in this case would be unreasonable.

4 **II. VENUE IS IMPROPER IN THIS DISTRICT**

5 For largely the same reasons as set forth above, the Court should dismiss this
6 case for lack of venue in this District. The federal venue statute, 28 U.S.C. §
7 1391(b), provides:

8 Venue in General. – A civil action may be brought in – (1) a judicial
9 district in which any defendant resides, if all defendants are residents
10 of the State in which the district is located; (2) a judicial district in
11 which a substantial part of the events or omissions giving rise to the
12 claim occurred, or a substantial part of property that is the subject of
13 the action is situated; or (3) if there is no other district in which an action
14 may otherwise be brought as provided in this section, any judicial
district in which any defendant is subject to the court's personal
jurisdiction with respect to such action.

15 28 U.S.C. § 1391(b). Here, none of the three venue requirements are satisfied.

16 First, venue is not proper in this District because Defendant does not reside
17 herein. For venue purposes, an entity "shall be deemed to reside, if a defendant, in
18 any judicial district in which such defendant is subject to the court's personal
19 jurisdiction with respect to the civil action in question." 28 U.S.C. § 1391(c). For
20 the reasons discussed above, this lawsuit does not subject Defendant to personal
21 jurisdiction in California. As a result, venue is also improper in any federal court in
22 the state.

23 Second, venue is not proper in this District pursuant to § 1391(b)(2) because a
24 substantial part of the events and omissions giving rise to Plaintiff's claims did not
25 occur here. As noted above, this case arises from a text received by a Texas
26 resident, from a Texas entity, which maintains a franchisee relationship with a
27 corporate entity residing in New Jersey. There is no affiliation between the District
28 and the events underlying this case.

1 Third, venue is not proper in this District under § 1391(b)(3) because there
 2 are other districts in which Plaintiff could bring this action. Plaintiff is a Texas
 3 resident who did business with a Jackson Hewitt franchisee in Texas that sent the
 4 text message at issue (from Texas). Defendant is incorporated in Delaware and has
 5 its principal place of business in New Jersey. At a minimum, Plaintiff could have
 6 filed this action in New Jersey, where Defendant acknowledges it is subject to
 7 jurisdiction, or in Texas, where he conducted business with Defendant's franchisee.
 8 Without a basis for venue in this Court, Plaintiff's Complaint should be dismissed.

9 **III. IN THE EVENT VENUE IS PROPER HERE, THE CASE SHOULD**
 10 **NEVERTHELESS BE TRANSFERRED**

11 Should the Court find that, in this case, the exercise of personal jurisdiction
 12 over Defendant is appropriate and that venue is proper, this action should
 13 nevertheless be transferred to either the District of New Jersey or the Western
 14 District of Texas pursuant to 28 U.S.C. 1404(a). The federal change-of-venue
 15 statute permits transfer where: (1) the receiving district is "a district or division
 16 where [the action] might have been brought," and (2) the transfer is for "the
 17 convenience of parties and witnesses" and "in the interest of justice." 28 U.S.C. §
 18 1404(a). Both requirements are met here.

19 **A. Plaintiff Could Have Filed In The District Of New Jersey Or The**
 20 **Western District Of Texas.**

21 The first requirement for transfer is met because both proper venue and
 22 personal jurisdiction exist in the United States District Court for the District of New
 23 Jersey and the Western District of Texas. Venue is proper in a judicial district in
 24 which any defendant resides, 28 U.S.C. § 1391(b), and/or "a judicial district in
 25 which a substantial part of the events or omissions giving rise to the claim occurred,
 26 or a substantial part of property that is the subject of the action is situated."
 27 Defendant maintains its principal place of business in Jersey City, New Jersey, and
 28 Defendant is subject to personal jurisdiction in New Jersey; moreover, Plaintiff

1 resides in the Western District of Texas and the text at issue was sent by an entity in
2 the Western District of Texas. Accordingly, Plaintiff could have filed this action in
3 the Western District of Texas or the District of New Jersey. *Daimler*, 571 U.S. at
4 137.

5 **B. Transfer Serves The Convenience Of The Parties And The Witnesses**
6 **And The Interest Of Justice.**

7 Prosecution of this case in New Jersey or Texas would also promote the
8 interests of convenience and justice. In evaluating this requirement of Section
9 1404(a), courts consider: (1) the location where the relevant agreements were
10 negotiated and executed, (2) the state that is most familiar with the governing law,
11 (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the
12 forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum,
13 (6) the differences in the costs of litigation in the two forums, (7) the availability of
14 compulsory process to compel attendance of unwilling non-party witnesses, and (8)
15 the ease of access to sources of proof. *See Painter's Dist. Council No. 30 Health &*
16 *Welfare Fund v. Amgen, Inc.*, No. CV 07-3880 PSG (AGRx), 2007 U.S. Dist.
17 LEXIS 85135, at *7 (C.D. Cal. Nov. 13, 2007) (Gutierrez, J.) (citation omitted).
18 Application of those factors to the facts here supports transferring this case to New
19 Jersey or Texas.

20 To begin with, the Central District of California is not convenient for either of
21 the parties because neither Plaintiff nor Defendant resides here. Plaintiff alleges that
22 he is a resident of Williamson County, Texas, and Defendant resides in Delaware
23 and New Jersey. Moreover, litigation costs would be reduced for both parties if this
24 case were litigated in New Jersey or Texas, as the evidence and witnesses relating to
25 Defendant's business practices are largely situated in New Jersey (where Defendant
26 is headquartered), and the evidence and witnesses relating to Plaintiff's TCPA claim
27 are located in Texas (where Plaintiff resides and transacted business with
28 Defendant's franchisee, and where the text message at issue was both sent and

1 received). *See Park v. Dole Fresh Vegetables, Inc.*, 964 F. Supp. 2d 1088, 1095
2 (N.D. Cal. 2013) (“Generally, litigation costs are reduced when venue is located
3 near the most witnesses expected to testify, and [t]he convenience of witnesses is
4 often the most important factor in resolving a motion to transfer.”) (citation
5 omitted). Further, considering “the respective parties’ contacts with the forum” and
6 “the contacts relating to the plaintiff’s cause of action in the chosen forum,” *Park*,
7 964 F. Supp. 2d at 1093, transfer is proper, as Defendant has no relevant contacts
8 with the current venue and, again, Plaintiff does not reside within the Central
9 District of California, so he too lacks a substantial contact to the venue.

10 Additionally, Plaintiff’s choice of forum in this case deserves little to no
11 weight. “[T]he Ninth Circuit, like other courts, has noted that the weight to be given
12 the plaintiff’s choice of forum is discounted where the action is a class action.”
13 *Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1157 (S.D. Cal. 2005) (“[W]hen an
14 individual brings a derivative suit or represents a class, the named plaintiff’s choice
15 of forum is given less weight.”) (quoting *Lou v. Belzberg*, 834 F.2d 730, 739 (9th
16 Cir. 1987)). “Deference to the plaintiff’s choice of venue is further diminished if the
17 moving party establishes one or more of the following factors: (1) the operative
18 facts have not occurred within the forum; (2) the forum has no particular interest in
19 the parties or subject matter; (3) the forum is not the primary residence of either the
20 plaintiff or defendant; or (4) the subject matter of the litigation is not substantially
21 connected to the forum.” *Metz v. U.S. Life Ins. Co.*, 674 F. Supp. 2d 1141, 1146
22 (C.D. Cal. 2009) (citation omitted); *see also Park*, 964 F. Supp. 2d at 1094 (“[T]he
23 degree of deference is substantially diminished in several circumstances, including
24 where: (1) the plaintiff’s venue choice is not its residence; (2) the conduct giving
25 rise to the claims occurred in a different forum; (3) the plaintiff sues on behalf of a
26 putative class; or (4) plaintiff’s choice of forum was plaintiff’s second choice.”)
27 (internal citations and quotations omitted). Here, “the operative facts have not
28 occurred within the forum,” and “the subject matter of the litigation is not

1 substantially connected to the forum,” *Metz*, 674 F. Supp. 2d at 1146, *see also Park*,
2 964 F. Supp. 2d at 1094, because the sending and receipt of the text message at issue
3 occurred outside of California, and “the forum is not the primary residence of either
4 the plaintiff or defendant.” *Metz*, 674 F. Supp. 2d at 1146; *Park*, 964 F. Supp. 2d at
5 1094.

6 The remaining factors do not weigh against transfer. To the extent there are
7 any agreements between the parties, those agreements would have been executed in
8 Texas, not California. And since Plaintiff’s claims arise under federal law, there is
9 no “state that is most familiar with the governing law.” *See Fontaine v. Wash. Mut.*
10 *Bank, Inc.*, No. CV 08-5659 PSG (Ex), 2009 U.S. Dist. LEXIS 41168, at *11 (C.D.
11 Cal Apr. 30, 2000) (Gutierrez, J.) (“ . . . where, as here, Plaintiff’s claims for relief
12 are based on federal law, both courts are presumably equally familiar with the
13 governing law.”). Finally, the only potential non-party witness identified by
14 Plaintiff to date is CallFire, which, as set forth above, is a technology provider with
15 no substantial connection to this case. *See Castillo*, 2018 U.S. Dist. LEXIS 201721,
16 at *16 (“while GoMoment may well be a witness in the instant case, it does not
17 appear to be a crucial witness because, as alleged in the complaint, it simply
18 provided a platform for [defendant] to use and nothing more. The critical witnesses
19 will be [defendant’s] employees — *e.g.*, those who made the decision to send the
20 text messages.”).

21 Accordingly, if this Court is not inclined to dismiss the Complaint on personal
22 jurisdiction grounds, it should find that venue is more appropriate in the District of
23 New Jersey or the Western District of Texas than in the Central District of
24 California and transfer this case accordingly.

25 **IV. PLAINTIFF’S CLASS ALLEGATIONS SHOULD BE STRICKEN**
26 **BECAUSE PLAINTIFF SIGNED A VALID CLASS-ACTION**
27 **WAIVER**

28 Finally, should this case remain in this Court, Plaintiff’s class claims should

1 be stricken, as Plaintiff signed an agreement waiving any right to assert claims
 2 against Jackson Hewitt on a class basis.⁶ Langstaff Decl., at Ex. 1. Specifically, the
 3 contract that Plaintiff signed with Jackson Hewitt provides:

4 **WAIVER OF JURY TRIAL AND PARTICIPATION IN CLASS**
 5 **ACTION.** WITH RESPECT TO ANY CLAIMS FOR MONEY
 6 DAMAGES AND/OR EQUITABLE OR INJUNCTIVE RELIEF,
 7 INCLUDING, BUT NOT LIMITED TO, ALL COUNTERCLAIM,
 8 CROSS-CLAIMS AND THIRD-PARTY CLAIMS THAT YOU MAY
 9 BRING AGAINST JACKSON HEWITT TAX SERVICE INC., AND
 10 ITS SUBSIDIARIES AND AFFILIATES, AND INDEPENDENTLY
 11 OWNED AND OPERATED THIRD-PARTY FRANCHISEES AND
 12 TAX PREPARERS OF ANY OF THEM, AND ANY FORMER,
 13 PRESENT AND FUTURE PARENT, SUBSIDIARY AND
 14 AFFILIATED CORPORATIONS, AND THE SUCCESSORS AND
 15 ASSIGNS OF ANY OF THEM, AND THEIR FORMER PRESENT
 16 AND FUTURE OFFICERS, DIRECTORS, AGENTS,
 17 SHAREHOLDERS, EMPLOYEES, AND REPRESENTATIVES
 18 (THE "JACKSON HEWITT SYSTEM"). YOU ARE GIVING UP
 19 YOUR RIGHT: (A) TO HAVE A TRIAL BY JURY TO RESOLVE
 ANY DISPUTE ALLEGED AGAINST THE JACKSON HEWITT
 SYSTEM; AND (B) YOU ARE GIVING UP YOUR RIGHT TO
 SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY
 GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY,
 AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF
 CLAIMANTS, IN ANY LAWSUIT FILED AGAINST THE
 JACKSON HEWITT SYSTEM.

20 **BY SIGNING BELOW, YOU AGREE TO THE TERMS OF THIS**
 21 **AGREEMENT, WHICH INCLUDES A WAIVER OF JURY**
 22 **TRIAL AND A WAIVER OF PARTICIPATION IN A CLASS**
 23 **ACTION, WHICH MAY SUBSTANTIALLY LIMIT YOUR**
 24 **RIGHTS IN THE EVENT OF A DISPUTE. YOU ALSO**
 25 **ACKNOWLEDGE RECEIVING A COMPLETED COPY OF**
THIS TAXPAYER INFORMATION FORM AND
AGREEMENT.

26
 27 ⁶ As Rule 12(f) provides that motions to strike must be brought in a pre-answer
 28 motion (*see* Fed. R. Civ. Proc. 12(f)(2)), Defendant has included this request for
 relief as part of this motion to preclude any argument that it has been waived.

1
2 Langstaff Decl., at Ex. 1. In accordance with this agreement, Plaintiff should be
3 prohibited from asserting his class claims here.

4 Rule 12(f) provides that “[t]he court may strike from a pleading an
5 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter
6 . . . on motion made by a party . . . before responding to the pleading . . .” Fed. R.
7 Civ. Proc. 12(f). Under this Rule, courts have stricken class allegations from a
8 complaint where, as here, a plaintiff signed a class-action waiver, barring the
9 plaintiff from bringing his or her action on behalf of a class. *See Christensen v.*
10 *Barclays Bank Del.*, No. 1:18-cv-12280-ADB, 2019 U.S. Dist. LEXIS 72239, at
11 *17-18 (D. Mass. April 30, 2019). This Court should similarly strike the class
12 allegations from Plaintiff’s Complaint.

13 CONCLUSION

14 Plaintiff’s claims, which arise from a text message sent by a Texas franchisee
15 of Defendant, which is located in New Jersey, to Plaintiff in Texas, bear no
16 connection to California. As a result, Defendant is not subject to the Court’s
17 jurisdiction in this action, venue is not properly laid in any court in this state, and
18 Plaintiff’s Complaint should be dismissed. Alternatively, this case should be
19 transferred to a venue more substantially connected to the claims at issue that is
20 more convenient for the parties and witnesses involved. Finally, should the Court
21 retain the matter, Plaintiff’s class claims should be stricken. For all of these reasons,
22 Defendant respectfully requests that the Court dismiss Plaintiff’s Complaint for lack
23 of personal jurisdiction and/or improper venue, or, in the alternative, transfer this
24 action to the District of New Jersey or the Western District of Texas, or, in the
25 alternative, strike Plaintiff’s class allegations.
26
27
28

1 Dated: May 31, 2019

Respectfully submitted,

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 South Grand Avenue, Ninth Floor, Los Angeles, CA 90017-4613.

On May 31, 2019, I served true copies of the following document(s) described as **DEFENDANT'S NOTICE OF MOTION AND MOTION TO DISMISS, TRANSFER, OR STRIKE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF MARGARET SCHUCHARDT AND AMORI LANGSTAFF IN SUPPORT; [PROPOSED] ORDER** the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Pursuant to the E-Filing System of the United States District Court, Central District of California, to the parties at the e-mail addresses on the Court's website.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 31, 2019, at Los Angeles, California.


Roxanne Lopez

SERVICE LIST

Jeff Hancock vs. Jackson Hewitt Tax Service
2:19-cv-02602-PSG-PJW

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